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Attorneys for Petitioner,
SHEARWOOD FLEMING

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT

In re

CASE NO. 05-3564 VRW

SHEARWOOD FLEMING,
Petitioner,

***APPLICATION TO SET BRIEFING
SCHEDULE RE MOTION TO DISMISS***

v.
ANTHONY KANE,

Respondent.

I, STEVE M. DEFILIPPIS, declare as follows:

1. I am an attorney at law duly licensed to practice before all Courts of this state. I am admitted to practice in the Northern, Southern, Eastern and Central Districts of California, the Ninth Circuit, and the United States Supreme Court. I am a member of the law firm of PICONE & DEFILIPPIS, attorneys for the Petitioner, SHEARWOOD FLEMING, in this action.

2. I have personal knowledge of the facts stated herein, and if called as a witness, I can competently testify thereto.

3. On July 5, 2006, this Court issued an order for Respondent to file an Answer to the Court's Order as to why the Petition for Writ of Habeas Corpus should not be granted. Instead, the Respondent filed a Motion to Dismiss rather than an answer.

However, there is no hearing date set and no briefing schedule has been issued. Therefore, Petitioner asks that this Court set a briefing schedule setting thirty (30) days from today as the date on which to file Petitioner's Opposition to Respondent's Motion to Dismiss. Petitioner will need this time to address the issues in the motion, as I have been heavily involved in preparing for back to back trials, in addition to my heavy writ case load. I have approximately three (3) dozen habeas proceedings pending in various federal courts, and another two (2) dozen in state courts, and all are in active litigation.

5. Accordingly, Petitioner respectfully asks this Court to set a briefing schedule making the opposition due on or before November 2, 2006.

I declare under penalty of perjury that the foregoing is true and correct, executed this 2nd day of October, 2006 in the City of San Jose, County of Santa Clara, State of California.

/s/ Steve Defilippis

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UNITED STATES DISTRICT COURT

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In re CASE NO. 05-3564 VRW

SHEARWOOD FLEMING, **ORDER RE BRIEFING SCHEDULE
ON MOTION TO DISMISS**
Petitioner,

v.
ANTHONY KANE,

Respondent.

Petitioner SHEARWOOD FLEMING having duly requested that this Court issue a Briefing Schedule, IT IS HEREBY ORDERED that Petitioner shall file his Opposition to Respondent's Motion to Dismiss, on or before November 1, 2006.

Dated: 10/11/2006



VAUGHN R. WALKER
UNITED STATES DISTRICT CHIEF JUDGE